

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTHA KISNER Claimant)	
VS.)	
U.S.D. #260)	Docket No. 195,477, 196,093, 199,119 & 202,669
Respondent)	
AND)	
KANSAS ASSOCIATION OF SCHOOL BOARDS)	
GALLAGHER WOODSMALL)	
Insurance Carrier)	
AND)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appealed the Order of Administrative Law Judge Nelsonna Potts Barnes entered on October 18, 1996, that granted claimant's Motion to Receive Deposition into Evidence.

ISSUES

Respondent alleges that the Administrative Law Judge exceeded her jurisdiction in admitting the deposition of Dr. C. William Alexander as evidence in this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the motion transcript and considering the briefs of the parties, the Appeals Board finds as follows:

This matter came before the Administrative Law Judge on claimant's Motion to Receive Deposition into Evidence. The deposition of Dr. C. William Alexander was taken on May 30, 1996, at the request of the respondent. Dr. C. William Alexander is a psychologist who had been treating the claimant since April 1994 through an appropriate referral from claimant's treating physician, Dr. James Gluck, an orthopedic surgeon. The respondent sent a Notice to Take Deposition of Dr. C. William Alexander to claimant's attorney dated April 18, 1996. The notice notified claimant's attorney that the deposition would be taken at Dr. Alexander's office in Wichita, Kansas, on May 30, 1996. The notice did not identify whether the deposition was for discovery or evidentiary purposes.

Claimant's attorney argues that it was his understanding the deposition was for evidentiary purposes. He argues that he had no knowledge the respondent intended the deposition to be for discovery purposes until a pretrial settlement conference was held on August 21, 1996. However, the respondent notified the court reporter at the deposition to identify the deposition as a discovery deposition. The court reporter sent copies of the deposition to all parties on June 3, 1996. The cover sheet of the deposition identified the deposition as a discovery deposition. Respondent argues that there is no legal authority under the Workers Compensation Act to permit the Administrative Law Judge to order the deposition admitted into evidence. Respondent concludes that the Administrative Law Judge's Order reads into the Workers Compensation Act that every deposition that is taken is considered evidentiary in nature unless the parties expressly agree otherwise. Respondent finds no statutory, administrative, legislative, or case authority for such a rule.

On the other hand, claimant argues respondent had a duty to notify her attorney in advance that the deposition was to be taken for discovery purposes only. Therefore, the claimant contends since claimant's attorney believed the deposition was for evidentiary purposes that the deposition should be made a part of the evidentiary record of the case. Claimant also argues the Administrative Law Judge did not exceed her jurisdiction by ordering the deposition to be a part of the evidentiary record. Claimant asserts that the Administrative Law Judge has inherent power to make evidentiary decisions, such as she did in this case during the litigation of a workers compensation case.

The Administrative Law Judge is granted a broad range of authority for the purpose of effectively managing the litigation of a workers compensation case. K.S.A. 44-523(a) provides that the Administrative Law Judge "shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and present evidence, insure the employee and employer an expeditious hearing and act reasonably without partiality." The Appeals Board finds that making an evidentiary ruling such as was made in this matter is part of the inherent authority granted the Administrative Law Judge by the Workers Compensation Act. Accordingly, the Appeals Board concludes that the Administrative Law Judge did not exceed her authority when she ordered the deposition of Dr. C. William Alexander to be included into the evidentiary record of this case.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated October 18, 1996, that granted claimant's Motion to Receive Deposition into Evidence should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kelly Johnston, Wichita, KS
Anton C. Andersen, Kansas City, KS
Paul Dugan, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director